

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

BRAD E. PROCTOR,

Plaintiff,

v.

Civil Action No. 2:19-cv-00432

**ROANE COUNTY COMMISSION d/b/a ROANE COUNTY
SHERIFF'S DEPARTMENT, M. P. KING,
N. S. STEPP, S. A. MCDONALD, Z. W. HARTLEY,**

Defendants.

COMPLAINT

For his Complaint against Defendants, Plaintiff Brad E. Proctor states as follows:

Parties

1. The Plaintiff at all times relevant to this Complaint was a resident of Clay County, West Virginia, within the United States Southern District of West Virginia.
2. Roane County Sheriff's Department is a law enforcement agency within the Southern District of West Virginia, a subdivision of the Defendant County Commission of Roane County, West Virginia.
3. Defendant M. P. King, at all times relevant to this Complaint, was a Roane County Sheriff's Deputy acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual capacity.
4. Defendant N. S. Stepp, at all times relevant to this Complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual capacity.
5. Defendant Z. W. Hartley, at all times relevant to this Complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual capacity.
6. Defendant S. A. McDonald, at all times relevant to this Complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual capacity.

Jurisdiction and Venue

7. This Court has jurisdiction pursuant to 28 U.S.C. 1331 and 1343.

Facts

8. Plaintiff hereby incorporates by reference paragraphs 1-7.
9. On or about January 10, 2018 Mr. Proctor allegedly fled from and successfully evaded Defendant M. P. King. During the vehicle pursuit, Mr. Proctor allegedly caused Defendant M P. King to wreck his cruiser.
10. On January 18, 2018, without warning, Defendants forcibly entered Mr. Proctor's home and arrested him on outstanding warrants.
11. Mr. Proctor immediately laid face down on the floor, completely prone- with his hands spread out above his head.
12. Mr. Proctor did not resist arrest, did not attempt to flee, and was completely compliant.
13. Unprovoked and without justification, M. P. King, N. S. Stepp, S. A. McDonald, and Z. W. Hartley beat, kicked, stomped and punched Mr. Proctor while he lay prone on the floor.
14. Defendants M. P. King, N. S. Stepp, S. A. McDonald, and Z. W. Hartley then handcuffed Mr. Proctor and threw him in the snow. Mr. Proctor laid in the snow with his hands cuffed behind his back while shirtless for over an hour.
15. Upon information and belief and subject to confirmation through discovery, Defendant M. P. King has numerous other incidents of using excessive force against suspects in the past.
16. Upon information and belief and subject to confirmation through discovery, Defendant Roane County Commission, who continues to employ Defendant M. P. King, is aware of numerous other incidents of his excessive force but has failed to take appropriate corrective action.

COUNT I

42 U.S.C. § 1983

Excessive Force

M. P. King, N. S. Stepp, S. A. McDonald, Z. W. Hartley

17. Plaintiff incorporates by reference the allegations in paragraphs 1 through 16.
18. The degree of force used against Plaintiff was objectively unreasonable, excessive and

unwarranted and violated Plaintiff's clearly established rights, which a reasonable police officer should have known pursuant to the Fourth and Fourteenth Amendments of the United States Constitution.

19. The actions of Defendants M. P. King, N. S. Stepp, S. A. McDonald, and Z. W. Hartley were malicious and in bad faith, in violation of clearly established law, or in a wanton or reckless manner, and as a proximate result thereof, the Plaintiff sustained physical, mental and emotional damages, incurred medical expenses, lost wages, suffered embarrassment, humiliation, annoyance, inconvenience, and suffered otherwise, and is entitled to recover damages and such other relief deemed appropriate.

COUNT II
42 U.S.C. 1983
Roane County Commission

20. Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 19.
21. Defendant Roane County Commission has engaged in a pattern, practice or custom of failing to adequately investigate and take corrective action for the misconduct of its employees, including but not limited to, failure to assign independent, unbiased, objective investigators in cases that involve physical injuries to suspects in the care custody and control of Defendant's employees.
22. The deprivation of Plaintiff's rights were caused by the implementation of customs, policies, and/or official acts/omissions of the Defendant to wit: failure to adequately investigate employee misconduct and failure to discipline employees for violations of a citizen's constitutional rights, including, the unjustified use of excessive force.
23. Defendant Roane County Commission, by these acts and omissions has exhibited deliberate indifference to the unreasonable risk of the unlawful deprivation of citizens' constitutional rights, which its customs and policies pose.
24. The customs and policies violate the Fourth and Fourteenth Amendments to the United States Constitution.
25. As a proximate result of Defendants' actions, Plaintiff sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, sustained lost wages and is entitled to recover damages for the same, and such other relief deemed appropriate.

COUNT III
Bystander Liability
M. P. King, N. S. Stepp, S. A. McDonald, Z. W. Hartley

26. Plaintiff hereby incorporate by reference the allegations in paragraphs 1 through 25.

27. Defendants M. P. King, N. S. Stepp, S. A. McDonald, and Z. W. Hartley actions and/or omissions violated their duty to uphold the law and protect the public from illegal acts, regardless of who commits them.
28. As a proximate result of the Defendants' actions and/or omissions, Plaintiff is entitled to recover damages including, but not limited, to physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, and are entitled to recover damages for the same, and such other relief deemed appropriate.

PRAYER FOR RELIEF

WHEREFORE, based upon the above stated facts, Plaintiff requests judgment against the defendants in an amount that will fully and fairly compensate him for his injuries including medical expenses, pain and suffering, loss of enjoyment of life, annoyance, aggravation, psychological distress, lost wages, and any other compensatory damages to be proved at trial. Plaintiff requests punitive damages against the defendants, reasonable attorney fees and costs, all other damages provided by law and any other relief this Court deems just and fair.

JURY TRIAL DEMANDED

**BRAD E. PROCTOR
BY COUNSEL**



**Mark S. Plants WVSB#9760
Plants Law Offices
625 D Street
South Charleston, WV 25303
mplants@plantslaw.com
Fax: 304-744-9168
Tel: 304-744-9148**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BRAD E. PROCTOR

(b) County of Residence of First Listed Plaintiff **CLAY**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

MARK PLANTS, 625 D STREET, SO CHARLESTON, WV 25303

DEFENDANTS

ROANE COUNTY COMMISSION, M.P. KING, N.S. STEPP, S.A. MCDONALD, Z.W. HARTLEY

County of Residence of First Listed Defendant **ROANE**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF ☒ 1 DEF ☒ 1 Incorporated or Principal Place of Business In This State PTF ☐ 4 DEF ☒ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S. CODE 1983

Brief description of cause:
EXCESSIVE FORCE**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

for the

[illegible]

v.

Civil Action No.

Defendant(s)

To: *(Defendant's name and address)* M.P. KING
ROANE COUNTY SHERIFF'S DEPARTMENT
200 Main Street
Spencer, WV 25276

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: PLANTS LAW OFFICES

Signature of Clerk or Deputy Clerk

for the

BRAD E. PROCTOR

Plaintiff(s)

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ROANE COUNTY COMMISSION DBA ROANE
COUNTY SHERIFF'S DEPARTMENT, M.P. KING,
N.S. STEPP, S.A. MCDONALD, Z.W. HARTLEY

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* ROANE COUNTY COMMISSION
ROANE COUNTY COURTHOUSE
200 Main Street
Spencer, WV 25276

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: PLANTO LAW OFFICES

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

for the



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Civil Action No.

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ROANE COUNTY COMMISSION DBA ROANE
COUNTY SHERIFF'S DEPARTMENT, M.P. KING,
N.S. STEPP, S.A. MCDONALD, Z.W. HARTLEY

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Defendant(s)

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To: *(Defendant's name and address)* N.S. STEPP
West Virginia State Police
Troop 4, Spencer Detachment
100 Triplett Road
Spencer, West Virginia 25276-9112

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: PLANTS LAW OFFICES

Date: _____

Signature of Clerk or Deputy Clerk

for the



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To: (Defendant's name and address)

S.A. MCDONALD
West Virginia State Police
Troop 4, Spencer Detachment
100 Triplett Road
Spencer, West Virginia 25276-9112

Spencer, West Virginia 25276-9112

PLANTS LAW OFFICES
625 D STREET
SOUTH CHARLESTON, WV 25303

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for the

BRAD E. PROCTOR

V.

Defendant(s)

Civil Action No.

Signature of Clerk or Deputy Clerk